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OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

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June 15, 2004

TO: All Massachusetts Telecommunications Carriers
D.T.E. 03-60 Service List

When the Department of Telecommunications and Energy ("Department") stayed the proceedings in our mass market circuit switching and hot cuts investigation in D.T.E. 03-60 following the D.C. Circuit Court's vacatur in USTA v. FCC, 359 F.3d 554 (D.C. Cir. 2004) ("USTA II") of the Federal Communications Commission's ("FCC") Triennial Review Order,¹ we expected all carriers to continue to engage in good faith negotiations to determine commercially acceptable arrangements for the availability of unbundled network elements ("UNEs"). Both the Solicitor General of the United States and the FCC have now declined to appeal the D.C. Circuit Court's decision, and the court's vacatur is scheduled to go into effect on June 16, 2004. The FCC has also indicated that it will issue interim unbundling rules following the effective date of the vacatur.

In Massachusetts, several competitive local exchange carriers ("CLECs") filed emergency motions asking the Department to order Verizon Massachusetts ("Verizon") to continue to provide UNEs at current rates, terms, and conditions until modifications are made to existing interconnection agreements and Verizon's wholesale tariff.² Subsequent to the

¹ In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147; Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. August 21, 2003).

² AT&T Emergency Motion for an Order to Protect Consumers by Preserving Local
(continued...)

Solicitor General's and the FCC's decisions not to appeal USTA II, Verizon has stated that it will provide CLECs with at least 90 days notice before taking any action to change its current provisioning of UNEs.

We agree that a 90-day maintenance of the status quo will allow all parties concerned to focus on continued negotiations. We urge all parties to continue good faith negotiations that may lead to commercially negotiated agreements. Verizon's statement provides at least short-term resolution to CLECs' concerns, and so the Department determines it is unnecessary to respond further to the emergency motions at this time.

While negotiations continue, the Department requests further expression of the parties' views on issues raised in both Verizon's and CLECs' responses to the emergency motions. We have attached a set of briefing questions to this letter and request that responses from the parties be filed by the close of business on July 30, 2004; replies by August 10, 2004.

By the Commission,

_____/s/_____
Paul G. Afonso, Chairman

_____/s/_____
James Connelly, Commissioner

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Eugene J. Sullivan, Jr., Commissioner

_____/s/_____
Deirdre K. Manning, Commissioner

Attachment

²(...continued)

Exchange Market Stability (May 28, 2004); CLEC Coalition Petition for an Expedited Order that Verizon Remains Required to Provision UNEs at Existing Rates and Terms (May 27, 2004).

ATTACHMENT**BRIEFING QUESTIONS****D.T.E. 03-60**

- When the vacatur takes effect, what are Verizon's obligations with respect to mass market switching, UNE-P, high capacity loops, and dedicated transport under applicable federal law, giving effect to any change of law provisions in carriers' interconnection agreements? What is the appropriate role for the Department, if any, under federal law when the vacatur takes effect?
- In the absence of effective federal unbundling regulations under Section 251 applicable to mass market circuit switching, UNE-P, high capacity loops, and dedicated transport:
 - What are Verizon's obligations to provide such UNEs under Massachusetts law?
 - Do Verizon's obligations as carrier of last resort require it to offer UNEs? See Intra-LATA Competition, D.P.U. 1731, at 76 (1985).
 - Do the terms of Verizon's Alternative Regulation Plan indirectly require it to continue providing mass market switching, UNE-P, dedicated transport, and high-capacity loops at TELRIC rates, and if so, what would be the consequences should Verizon discontinue providing any of the above TELRIC-based rates?
 - If carriers reach agreement on terms for mass market circuit switching, may or must those agreements be filed with the Department as interconnection agreements for approval under 47 U.S.C. § 252? May or must those agreements be filed with the Department for approval as customer specific arrangements? See AT&T Communications of New England, Inc., D.P.U. 90-24 (1990). Would such terms be subject to the federal pick and choose rule? 47 U.S.C. § 252(i).
 - Should the Department establish a transition plan to replace TELRIC-based rates for mass market circuit switching, UNE-P, high capacity loops, and dedicated transport with just and reasonable market-based rates, as has been proposed in other states, such as New York, and if so, what should be the parameters of such a plan? See, e.g. In the Matter of Telecommunications Competition in New York Post USTA II Including Commitments Made in Case 97-C-0271, N.Y.P.S.C. Case 04-C-0420. What authority would the Department have to do so?

- Should the Department proceed with a separate hot cuts investigation under state law? If so, may the record already compiled in D.T.E. 03-60 be incorporated into such a proceeding? Would the scope of such an investigation and standard of review of proposed hot cut processes be different from the investigation in D.T.E. 03-60?
- What are Verizon's obligations pursuant to its wholesale tariff?
- What steps, if any, should the Department take to encourage carriers to enter voluntarily into agreements with respect to mass market circuit switching, UNE-P, high capacity loops, and dedicated transport that promote efficiency, fairness, rate continuity, and earnings stability for all parties?
- Should the Department seek a declaratory ruling from the FCC as to whether the BA/GTE Merger Order requires Verizon to continue to provide mass market switching, UNE-P, dedicated transport, and high capacity loops at TELRIC?
- Is the D.C. Circuit Court's decision in USTA II a "change of law" affecting carriers' existing interconnection agreements?
- Does § 271 of the Telecom Act require Verizon either directly or indirectly, by virtue of the trade-offs under the Act, to continue to provide de-listed UNEs at TELRIC?